IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 195 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA Sd/-
and
Hon'ble MR.JUSTICE D.P.BUCH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJULABEN WD/O B C PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 195 of 1992

MR NS DESAI for Petitioner No. 1

MR MA BUKHARI APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 07/12/2001

C.A.V.JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The appellant, original accused, has brought this appeal before this Court under Section 374 of the Code of Criminal Procedure, 1973 challenging the Judgment and conviction order recorded by the learned Sessions Judge, Sabarkantha at Himatnagar on 28th February, 1992 under which the present appellant has been sentenced to suffer rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code.

2. The case of the prosecution before the Trial Court may briefly be stated as follows.

2.1 The deceased Gopal alias Kabro, aged about 2 years, was seen entering in the house of the present appellant - original accused, Manjulaben, widow of Bhikhabhai Chhaganbhai Patel, residing at Village Radodara, Taluka Bayad, District Sabarkantha at noon hours on 28th December, 1989. It seems that the appellant used to invite the said child by showing coconut to her house. The prosecution has alleged that the child entered the house of the present appellant at noon hours on the aforesaid date and, thereafter, the said child was not found coming out from the said residence. The child was not traceable and traced out and, therefore, an inquiry was made with respect to the said child. Ultimately Kailasben Kuberbhai Patel, Exh. 20, informed Maganbhai that she had seen the said child entering the house of the appellant. However, when the child was not traced out, the persons residing in the said area gathered together and inquired from the appellant. She told that the deceased child had entered the house of the appellant and, therefore, the child was in her house. At that time, the appellant denied the said position and said that the child was not in her house. Thereafter, inquiries were made elsewhere and more and more persons gathered together from the said locality. Since the child was seen entering the house of the appellant, people, who had gathered together, doubted about the statement made by the appellant. They doubted that the child was still in the house of the appellant and, therefore, some persons entered the house of the appellant. Thereafter, the dead body of the said child was found in a tin, which was lying in a wooden box in the said house of the appellant. Thereafter, Police was informed and the police arrived at the spot. First Information Report was lodged and the dead body of the deceased child was taken into custody by the Police. Postmortem was prepared and inquest panchnama was also prepared. Blood stained articles were collected from the residence of the appellant. The appellant was arrested

and the statements of the witnesses were recorded. Ultimately, it was found that the appellant had committed murder of the said child by strangulation and therefore, at the conclusion of the investigation, a chargesheet was filed against the appellant for an offence punishable under Section 302 of the Indian Penal Code.

2.2 The learned Judicial Magistrate First Class found that the case was exclusively triable by the Court of Sessions and, therefore, the learned Judicial Magistrate First Class committed the case against the appellant to the Court of Sessions.

2.3 Thereafter, the case was registered as a Sessions Case No. 94 of 1990 against the present appellant. Charge was prepared and framed at Exh.4 against the present appellant for the offence punishable under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge when her statement was recorded at Exh.5 after providing her police investigation papers. The Trial Court proceeded to record evidence against the appellant. At the conclusion of the evidence, the Trial Court recorded further statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973. The learned Trial Judge provided an opportunity to the appellant to explain the evidence against her. The appellant has stated that she has not committed any offence and false case has been fabricated against her and, therefore, she may be acquitted.

2.4 The appellant did not lead defence and did not enter the witness box for tendering evidence as her own witness. The learned Trial Judge heard the arguments of both the sides and, thereafter, the learned Trial Judge found that there was sufficient material on record to hold the appellant guilty for committing the murder of the said child. The learned Trial Judge, therefore, convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code. The learned Trial Judge heard the parties with respect to the quantum of punishment and thereafter, the learned Trial Judge found that this is not the rarest of the rare case, therefore, directed that the appellant be sentenced to suffer rigorous imprisonment for life.

3. Feeling aggrieved by the said judgment and conviction order of the learned Trial Judge, this appellant has preferred this appeal before this Court. It has been mainly contended that the learned Trial Judge has committed serious error in appreciation of evidence

produced before the Trial Court. That the learned Trial Judge has committed error in ignoring the fact that there was no motive proved against the appellant for committing the said offence. That the learned Trial Judge has committed error in not holding that the whole chain and link of the prosecution case have not been fully proved. That the learned trial Judge has erred in considering the aspect that this case was based on circumstantial evidence and, therefore, all the links are required to be satisfactorily established. This aspect of the case has not been properly appreciated by the learned Trial Judge. That the learned Trial Judge has not properly appreciated that there was previous enmity between the families. That the learned Trial Judge has not properly appreciated the evidence with respect to the injuries said to have been sustained by the deceased child.

5. The appellant, therefore, prays that the appeal be allowed; conviction be quashed and set aside and the appellant be acquitted from the charge framed against her and she be released forthwith from the Jail.

6. On receipt of the appeal, it was admitted by an order dated 06/03/1992. By an order dated 16/03/1992, the appellant was ordered to be released on bail in the some of Rs.5000/- and surety of like amount on condition that the accused shall not reside at village Radodara, Taluka Bayad till final disposal of the appeal.

7. Thereafter, the appeal has been listed on board for final hearing and we have heard the learned advocate appearing for the appellant as well as the learned APP for the State.

8. Incidently, both the learned advocates have taken us through the evidence on record including documentary as well as oral evidence. They have also taken us through the judgment of the Trial Court.

9. As stated above, it is the case of the prosecution that the child, Gopal alias Kabro, aged about 2 years, was seen entering the house of the appellant on the date of the incident, i.e., 28th December, 1989 at noon hours and the said child was not seen coming out of the said residence. Inquiry was made to which, the appellant stated that the child was not in her house. Ultimately, some persons entered her house and it was found that the dead body of the child was in a tin and the tin was in a wooden box and those were covered with a view to see that nobody would have an idea that the dead body of the child was in the said tin.

10. The learned advocate for the appellant has contended that the evidence of the witnesses is not acceptable. He has taken us through the evidence of the witnesses examined by the prosecution in support of the case.

11. If we take up the evidence of these witnesses, it would be necessary for us first to look at the evidence of P.W.-3, Kailashben Kuberbhai Patel, Exh. 20. She is a neighbour of the appellant. Residence of the appellant is just opposite the residence of the witness, Kailashben. She has deposed that there is a row of houses in the said street and even in opposite direction, there is row of houses. It has been deposed by her that the house of the appellant is just opposite to her house situated at village Radodara, Taluka Bayad, District Sabarkantha.

12. With respect to the event in question, the witness has deposed that the said child used to go the house of the appellant very often. The appellant used to call the said child by showing coconut. It seems that the said child liked coconut very much. The deceased used to be tempted to go to the house for getting coconut. Even on the date of the incident, as per the evidence of this witness, the said child had come to her house. That thereafter, the appellant invited the said child by showing coconut and the said deceased child entered the house of the appellant for getting the said coconut. The witness has further stated that since coconut was shown to the deceased child, the deceased child followed the appellant and went inside her house. According to her evidence, it was around at 12.00 noon.

13. She has further deposed that at about 12.45 in the after noon, Maganbhai had come to inquire about the deceased child, to which, she has said that the child was not in her house. But, she had seen the deceased child entering the house of the appellant. She has further deposed that as the deceased was not traceable, many persons of the locality gathered together and inquiry was made from the appellant. That she conveyed that the deceased child had entered into the house and the said child was still in the house of the appellant. That the appellant said that the said child was not in her house.

14. She has further said that inquiry was made elsewhere and more and more persons gathered together for ascertaining the whereabouts the deceased child. Ultimately, it was doubted that the child was still in

the house of the appellant as the witness had seen the deceased child entering the house and, therefore, some persons entered the house of the appellant. They made inquiry regarding the whereabouts the said child in the house of the appellant. The witness has further said that she went near the residence of the appellant but some persons started crying and weeping and it was conveyed that the dead body of the child was found from a tin in the house of the appellant. That as it was not possible for her to see a dead body, she returned to her house.

15. This witness was cross-examined at a great length, on behalf of the appellant, before the trial Court. Efforts were also made to show that the evidence given by this witness was not genuine and she was not telling the truth. Efforts were also made to show that her versions before the Police and the Court were contradictory. It can certainly be found that though couple of contradictions have been established by the defence during the cross-examination of the witness, nevertheless, it is also a matter of record, that so far material particulars are concerned, there is no contradiction between the evidence tendered before the Court and the statement given by her before the Police. It would be seen that her evidence with respect to entry of the deceased child in the house of the appellant is extremely consistent with her previous statement recorded by the Police, during the course of investigation. Even the evidence of the witness with respect to bringing out the said child from the tin from the house of the appellant is also very much consistent with her earlier statement recorded at the stage of investigation. Therefore, on material, particular her evidence, is not contradictory to the previous statement at the investigation. In that view of the matter, it cannot be said that versions given by this witness are not acceptable.

16. The trial Court has scrutinised the evidence of the witnesses thoroughly and after appreciation of evidence, the trial Court has relied upon the evidence of this witness. The learned advocate for the appellant has not been able to argue as to why the evidence of this witness should be rejected.

17. Even otherwise, she is a natural witness. Her house is just opposite the house of appellant. The incident of entry of the deceased child in the house of the appellant took place at about 12.00 noon hours and naturally, females would be in their house at that time.

The house of the appellant being just opposite, it was quite possible for the witness to see the deceased child entering the house of the appellant. It is mere so because she has positively stated that minor child came to her house first and then, went to the house of the appellant. Therefore, it is quite probable that the witness had all the opportunities to see the minor child entering the house of the appellant at 12.00 noon. There is no reason to disbelieve the evidence of this witness.

18. So far as this witness is concerned, no allegation has been made against her. It is not the case of the appellant that this witness has an axe the grind against the present appellant. It is not the case of the present appellant that this witness had no good terms with the present appellant. In that view of the matter, it is not possible for this Court to reject the evidence of this witness.

19. It is also required to be considered that this witness has not taken undue advantage of her presence at the spot. At the time, when the child entered the house of the appellant, she has not overstepped in her version. She could have said that even when the dead body was found out from the tin from the house of the appellant, she was present there and she had seen the dead body being taken out from the tin. She does not say so. Instead, she simply says that as she was not in a position to see the dead body of the deceased child, she returned to her house. It shows that her conduct and evidence are quite natural, therefore also, her evidence cannot be rejected for any reason.

20. Shankerbhai Kantibhai Patel (P.W.-4), Exh.21, is another witness, who has been examined by the prosecution. According to the evidence of this witness, who is one of those persons who entered the house of the present appellant for searching the child, when he along with other persons entered the house of the appellant, it was conveyed to him that the child entered the house of the appellant and the child has not come out and, therefore, the child was still in the house. On this understanding, the witness entered the house of the appellant.

21. The witness has positively said that he inquired about the presence of the child and the appellant clearly said that she did not know anything about the child. The witness has further said that the appellant was told to hand over the child if the child was hidden in the house. At that time, she again told the child was not in her

house. The witness has stated that earlier also, he had also gone to the house of the appellant for inquiry of the said child, but, the appellant gave abuse so that they came out from the house without entering the same.

22. The witness has further said that thereafter, all decided to enter in the house of the appellant for the inquiry of the said child. That thereafter, some persons, named by him, entered the house of the appellant. Thereafter, they inquired about the new house of the appellant, which is just behind the old house of the appellant. That new house has been divided into two parts. One part is in custody and possession of the appellant. That they had gone on the Meda. It was noticed that some house hold kits were lying at the said place. Even the appellant also followed them to the said meda. That they notice that a wooden box was also lying behind the appellant. That they told the appellant to move a little, so that, they could make a proper inquiry. At that time, the appellant had told that nothing was there. That however, they saw a wooden box and it was noticed that there was a tin in the said wooden box. Therefore, they insisted on looking into the said tin, to which, the appellant told that her ornaments were lying in the said tin. At that time, the witness and other persons told her that they did not want her ornaments. That she was informed to open the tin and to permit the persons present there to look into the said tin. That despite that, the appellant did not leave the spot and, therefore, the witness and the persons present there had doubted on the conduct of the appellant and, therefore, Manubhai, nephew of the appellant, was called there to move the appellant from the said place. That at that time, Manubhai told the appellant that she should show the tin to the persons present there and nobody would be allowed to touch the ornaments. That despite the said position and assurance, the appellant did not move and she hold the tin in her hands. That Manubhai, her nephew, tried to snatch the said tin from her and during the scuffle, the tin slipped out and had fallen on the ground. That in the process, the dead body of the deceased child fell out of the said tin. That there was no lid on the said tin but mud was spread over the said tin. According to the case of the witness, when they saw the dead body of the deceased child, it was noticed that throat of the deceased child was rounded by a thick broad rope (pati of khatla). They could identify that it was the dead body of the deceased Kabro. They could notice that ear of the dead body was bleeding. Blood was coming out from the head. There was injury on the head of the deceased child. He had put on T-shirt and knicker. This

had happened at about 4.00 p.m. That the witness lifted the dead body of the child and brought the dead body at the ground level. That the dead body of the child was placed near the door of the new house of the appellant.

23. The witness has further said that as soon as the dead body was found from the house of the appellant, the appellant went to one small room behind the said meda and chained the said room from inside and grass was stored in the said room. That Jashubhai entered there from another passage and brought the appellant outside the room where the dead body was kept. That the appellant was weeping and she said that she had committed a mistake and, therefore, all should pardon her. That thereafter, Police was informed by Natubhai and the Police arrived at 5.00 p.m. That he had shown the place to the Police for drawing Panchnama and tin was also shown. It was attached by the Police.

24. The said witness has also been cross examined by the learned advocate for the defence. An attempt was made to show that if the appellant would leave Radodara on account of the aforesaid incident, her property would go to her nephew. The witness has said that he could not say so. Even during the course of cross examination, efforts were also made to show that with a view to see that nephew of the appellant gets the property, she has falsely been implicated. If the property belongs to the appellant and if she is involved in the offence, even then, the property would not go to some one else. Ordinarily, property would go to her son and daughter after her death and not during her lifetime, so the entire case of fabrications of story for her property is not acceptable to any extent.

25. As stated above, the witness has been cross-examined, but, nothing fruitful has been brought out from the evidence of the witness. However, some contradictions have also been shown but, they are not found to be material.

26. Now so far as finding out of the dead body of the deceased child from the house of the appellant is concerned, evidence has been scanned during the lengthy cross examination of this witness. When the evidence of this witness does not stand contradicted, there is no reason to reject the evidence of this witness.

27. Almost similar evidence has been tendered by Natwarbhai Kodarbhai Patel, Exh.22. He also gives

similar version. He has also stated that the dead body of the child was found from the tin in the house of the appellant and the dead body was brought down by the persons who had gathered together. The witness has also said that thereafter, the dead body of the deceased was seen and he had also seen that a thick cotton rope was found around throat of the deceased child and his ear was bleeding. He has also said that the appellant was found weeping and was saying that she had committed a mistake. He has also stated that the Police had arrived there after receiving a telephonic message from him. This witness has also been cross-examined at length, but, nothing, fruitful has been found from his lengthy cross-examination.

28. The dead body of the deceased was handed over to the Medical Officer for postmortem. Doctor was testified before the trial Court at Exh.10. Dr. Patel has deposed before the trial Court about injuries noticed on the person of the deceased child. The witness has also stated that he had prepared a postmortem note which has been produced at Exh.12. The postmortem note clearly says that cause of death of deceased is asphyxia due to strangulation. In column no.17 of postmortem note, injuries have been recorded which clearly support the case of the prosecution that the deceased died on account of strangulation.

29. The learned advocate for the appellant has strenuously argued before us that motive is an important piece of evidence particularly in the case of circumstantial evidence and the same is absent in the present case and, therefore, the accused may be given benefit of doubt. In support of the said argument, the learned advocate for the appellant has relied upon a decision of the Hon'ble the Supreme Court in the case of SAKHARAM vs. STATE OF MADHYA PRADESH reported in 1992 CRI. L.J. 861 wherein it has been held that `absence of motive becomes a plus point for the accused when the evidence against him is only circumstantial.'

30. At the same time, it would be relevant to consider the decision of the Hon'ble the Supreme Court in the case of TANVIBEN PANKAJKUMAR DIVETIA vs. STATE OF GUJARAT reported in 1997(2) G.L.R. 1346. It has been observed there that `in case of circumstantial evidence, each and every incriminating circumstance must be clearly established by reliable and clinching evidence.' There cannot be any dispute about the same. At the same time, it has also been observed that `if the evidence of murder is reliable, conviction can be based even if the motive

is not established.' It is also observed that `if prosecution case is based on circumstantial evidence, motive assumes greater importance.' This decision was rendered by the two Hon'ble Judges of the Hon'ble Apex Court on 06/05/1997. As against that, it would be worthwhile to consider an old decision of the Hon'ble the Supreme Court in the case of RAJINDER KUMAR & ANOTHER vs. STATE OF PUNJAB reported in A.I.R. 1966 1322. Incidently, this decision has been rendered on 04/05/1962 by the three Hon'ble Judges of the Hon'ble the Supreme Court. There, it has been observed that `absence of motive is also a circumstance which is relevant for assessing the evidence. The circumstances which proved the guilt of the accused are, however, not weakened at all by this fact that the motive has not been established. It often happens that only the culprit himself knows what moved him to a certain course of action.'

31. A latest pronouncement of the Hon'ble the Supreme Court on the aspects of motive and circumstantial evidence can be gathered from the case of STATE OF U.P. vs. BABU RAM reported in A.I.R. 2000 SC 1375. There, it has been observed that `motive is a relevant factor in all criminal cases based on testimony of eye witnesses and circumstantial evidence.' In that case based on circumstantial evidence, the deceased declined partition of the landed property as asked by the accused. The accused himself was shown to have said about motive for murder. It was confirmed by his sister. It was found that the motive factor cannot be said to have weakened case of prosecution.

32. In the present case, the learned advocate for the appellant has argued at length and stated that the prosecution ought to have examined Manubhai for establishing an element of motive. In the present case, it is a matter of record that this Manubhai is very close relative of the appellant and, therefore, looking to the relationship, the prosecution would not examine this witness and was not expected to examine him. Therefore looking to the relation, non-examination of Manubhai cannot be held fatal to the case of the prosecution.

33. It has also been argued that there is contradictory version. That firstly a case was placed before the trial Court that the dead body was brought down before arrival of the Police and secondly, it has been said that the dead body was brought down after arrival of the Police. Once it has been established that the dead body was found from the house of the appellant,

it is not material to establish when the dead body was brought down. Here, there is no contradiction going to the root of prosecution case. Then, it has also been said during the course of the arguments that there is interpolation in the first entry made in the diary of the Police Station. On going through a xerox copy of the original entry, it is found that there is no interpolation and only couple of lines have been added subsequent to the original entry. But, both the entries have been signed by P.S.O. and line has been drawn right below the second entry showing that both the entries have been made simultaneously. It shows that there is no interpolation in the said entry.

34. At the same time, it has also been argued that the second entry has not been supported by the witnesses. It is clear that telephonic message regarding information of the incident of murder was conveyed. The P.S.O has made clear that he further inquired from the sender of the message and whatever he derived was again inserted in the said diary and that was also signed by him. Therefore, there is no contradiction between sender of the message and note, which is actually made in the Police Station diary. It was also argued that there was dispute of land between the parties and about the visit of one Mistry in the house of the appellant. That the said situation was found to be doubtful. Again it is a matter of motive as stated above. In that view of the matter, the trial Court cannot be said to have committed any illegality, even if visit of Mistry was not fully established. If the close relatives would have been examined, naturally, they would not have supported the case of the prosecution to see that the appellant is going behind the bar for the rest of her life. She being a lady, relatives would not like to see that her involvement is made in the said event touching her character. Therefore, non examination of the such witnesses cannot be held fatal to the case of the prosecution.

35. It was also argued by the learned advocate for the appellant that the appellant made her side clear by tendering an explanation that the child was not in her house. Now that explanation was found to be false when the dead body was found out by the mob from her house and the witnesses entering the house were totally unconnected with the deceased child and his family. In that view of the matter, when independent witnesses have seen the dead body of the deceased child hidden in a tin and the tin was also placed in a wooden box wherein a thick rope was arounded neck of the dead body of the deceased child and

those things were stained with blood, it cannot be said that there was no material before the trial Court to hold the accused guilty and that the witnesses tendering evidence before the trial Court were not reliable.

36. Then, it has also been contended that alleged confession was not part and parcel of record. It was also noticed that such a question was put to the witness and the witness stated that such a statement was not made before the Police Station. Any way, there is nothing on record to show that extra judicial confession, said to have been made before so many persons, was not actually part and parcel of the Police Statement. There is nothing on record to show that the witness did not tell the Police at the investigation stage that such a confession was made or in the alternative, there is nothing on record to show that the fact of extra judicial confession was brought in light for the first time during the course of the evidence before the trial Court and it was not part and parcel of the record at the investigation stage.

37. It is, therefore, clear that the evidence of the witnesses is quite consistent. It is corroborated and supported one another. There is no material contradiction on material particulars with the earlier statements at the stage of investigation. When the dead body of the deceased child was found, articles were found stained with blood and it is recorded that it was human blood. As the fact that the child was seen entering the house of the appellant has been duly established and the fact that the dead body was found from the house of the appellant has also been duly established, there is no contradiction on these aspects of the case of the prosecution. The witnesses deposing to that effect are totally disinterested inasmuch as nothing has been shown that these witnesses had any interest in the ultimate result of the case. In fact, we are in general agreement with the reasonings and findings of the learned Trial Judge and, therefore, while dismissing the Appeal, it is not very much necessary to discuss the evidence at length as laid down in the case of STATE OF GUJARAT vs. MANSUKHLAL LOVCHAND CHOKSHI reported in 1993(2) G.L.H. 849.

38. However, the learned advocate for the appellant, Mr. N.S.Desai, has taken us through the evidence and the judgment in question and has argued the matter at a great length. With a view to deal with the points of arguments raised by him, it is found necessary to give some reasons

for confirming the reasonings and findings recorded by the learned Trial Judge. Any way, it is clear that the evidence is quite reliable and evidence stands fortified by the panchnama, evidence of investigating officer and medical evidence. Therefore, there is nothing to reject the evidence of the witnesses.

39. To some extent, an element of motive has been established by the evidence. Kailashben has also deposed in paragraph - 4 of the deposition that the appellant and Maganbhai were not having good terms and there is some dispute with boundaries of their fields. It is also deposed by her that one Mistry was frequently visiting the residence of the appellant and, therefore, Maganbhai used to rebuke her. Incidently, the deceased child was daughter's son of Maganbhai. The witness has deposed that daughter of Maganbhai who happened to be mother of the deceased child is serving and staying elsewhere with her husband and as she had twins, son Gopal alias Kabro was staying with Maganbhai and the daughter was staying with Keshubhai. This shows that Maganbhai was maternal grand father of the deceased child. This fact has been supported by the evidence of Shankerbhai, Exh.21. He has also deposed that there was some dispute about boundaries of the fields between the appellant and Maganbhai, maternal grandfather of the deceased child.

40. This shows that there was material on record even on the aspect of the motive. The material evidence on this aspect can be given by near relatives of the appellant, who have not been examined. Even the evidence with respect to the motive will not go to the root of the case and the case of the prosecution cannot stand weakened on that ground.

41. Even the conduct of the appellant is quite relevant. Firstly, the appellant did no allow the mob to enter her house, but, when she was interrogated by the mob, she said that the child was not in her house and then, she did not allow the mob to go upstairs and then she stood in front of the wooden box in which the dead body was hidden by her. When the witnesses tried to get the tin to look in it, she held it with her and in the process of scuffle, the dead body fell down from the said tin. Thereafter, she started weeping and had stated that she had committed a mistake. This conduct on her part becomes very relevant evidence and is quite consistent with the evidence of the witnesses. This aspect would lead to an inference that it was only she and she alone who had committed the offence of murder of the deceased.

42. We are, therefore, of the opinion that the learned Trial Judge was perfectly justified in relying on the evidence of the witnesses who tendered the evidence before the trial Court. There is no reason to set aside the reasonings and findings recorded by the learned Trial Judge with respect to the guilt of the accused. There is sufficient material to hold that the appellant had committed murder of the deceased intentionally by strangulation with the help of a thick rope. The fact is further supported by blood stained articles seized from the residence of the appellant.

43. Considering the above aspects, it is quite clear that the appellant is proved to have committed the murder of the deceased child and, therefore, there is no merits in the present appeal. The judgment and conviction order of the learned Trial Judge are legal, proper and perfect. There is nothing to interfere with the same since there is no merit in the present appeal. For the reasons recorded hereinabove, we dismiss the present appeal and confirm the judgment and order of conviction recorded by the learned Trial Judge.

44. Since the appeal is ordered to be dismissed, the appellant will have to surrender. Since she is on bail, the appellant shall surrender forthwith and if she does not surrender within a week, non-bailable warrant for her arrest shall be issued. The appeal is, therefore, disposed of accordingly.

Sd/-
(B. J. Shethna, J.)
Sd/-
(D. P. Buch, J.)
Rajendra